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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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F3M1 / 0220

EXAMINER
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ART UNIT 3001 PAPER NUMBER

5
02/20/97

DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- Responsive to communication(s) filed on _____
 This action is FINAL.
 Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- Claim(s) 1 - 8 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.
 Claim(s) _____ is/are allowed.
 Claim(s) 1 - 8 is/are rejected.
 Claim(s) _____ is/are objected to.
 Claims _____ are subject to restriction or election requirement.

Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
 The drawing(s) filed on _____ is/are objected to by the Examiner.
 The proposed drawing correction, filed on _____ is approved disapproved.
 The specification is objected to by the Examiner.
 The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 All Some* None of the CERTIFIED copies of the priority documents have been received.
 received in Application No. (Series Code/Serial Number) _____
 received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- Notice of Reference Cited, PTO-892
 Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
 Interview Summary, PTO-413
 Notice of Draftsperson's Patent Drawing Review, PTO-948
 Notice of Informal Patent Application, PTO-152

-- SEE OFFICE ACTION ON THE FOLLOWING PAGES --

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Part III DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kock (529) in view of Berndt and Erdman.

Kock (529) discloses a skin temperature measurement device having two sensing means spaced apart for contact with the skin where there is a control to determine the difference in between the two temperatures; however, it does not disclose the use of thermistors, a housing or the difference between the rate of change of the signals when they exceed a predetermined threshold.

Berndt discloses a device for use at a single location of the body in a housing and operative above a certain temperature in an analogous art for the purpose of detecting temperature at a small sit and for activation only above a certain temperature.

Erdman discloses a device that measures the rate of change of blood velocity flow and the difference in between the flow in opposite hands in an analogous art for the purpose of measuring differential blood flow and the pooling between extremities.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the device of Kock (529) as shown by Berndt and Erdman because a smaller device would enable temperature measurement at a very specific location and the and only above a certain temperature and the derivative of the rate of change of the temperature would enable accurate determination of temperature difference across different parts of the body. The use of a thermometer as opposed to a thermistor is a function equivalent and obvious design choice.

3. Claims 2, 3, 4, 6, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kock (529), Berndt and Erdman as applied to claims 1 and 5 above, and further in view of Patel.

Kock (529), Berndt and Erdman disclose the limitations above; however, they do not show the apparatus mounted on a substrate or a means of representing failure of the first or second sensor.

Patel shows a sensor continuity detector having two sensors mounted on a substrate which are able to detect the difference between the two signals to represent functional failure of one of the two sensors and a width extending between the two sensors in an analogous art for the purpose of projecting and receiving a signal and determining failure of the device during usage. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the device of Kock (529), Berndt and Erdman as shown by Patel because the substrate mounting provides and inexpensive structure for placing the

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sensors in close proximity and the failure detection mechanism would indicate when the device is no longer functioning properly.

Regarding Claims 4 and 8, the use of a neck between the two sensors is a design choice.

Any inquiry concerning this or earlier communications from the examiner should be directed to Pamela L. Wingood, whose telephone number is (703) 308-2676. The examiner can normally be reached on Monday-Thursday from 7:30 to 5:00. The examiner can also be reached on alternate Fridays. Additionally, the SPE for Art Unit 3301 is Mr. Hafer, and the Group's central fax number is (703)305-3590.

Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 308-0858. The FAX number for this art unit (3301) is (703) 308-2708.


Pamela L. Wingood
February 17, 1997


J. R. HAVER
PRIMARY EXAMINER
GROUP 3300